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Christopher A. Lee

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER A. LEE

Appeal 2009-000172
Application 09/727,248
Technology Center 3700

Decided:¹ June 15, 2009

Before LORA M. GREEN, RICHARD M. LEOVITZ, and
MELANIE L. McCOLLUM, *Administrative Patent Judges*.

McCOLLUM, *Administrative Patent Judge*.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a method and system for placing interactive wagers. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Claims 1-46 are pending and on appeal (App. Br. 3). The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). We will focus on claim 1, which reads as follows:

1. A method for placing interactive wagers on races that are to be run using an interactive wagering application that is implemented using user equipment, comprising:

providing a user at the user equipment with an opportunity to direct the interactive wagering application to automatically select, using a random-number generation application, which runner or runners are to be used in a wager for a race to be run; and

providing the user with an opportunity to use the interactive wagering application to place the wager.

Claims 1-46 stand rejected under 35 U.S.C. § 103(a) as obvious over Stronach (WO 00/67215 A1, Nov. 9, 2000) in view of Tulley (US 6,688,976 B1, Feb. 10, 2004) (Ans. 3).

The Examiner relies on Stronach for disclosing “that upon actuation of the quick pick button the wagering terminal automatically selects racing candidates based on various algorithms” (*id.*). The Examiner finds that Stronach teaches “all of the claimed invention, except explicitly a random number generator means for automatically selecting candidates or racers located remotely from the wagering terminal or at a host location” (*id.* at 4).

The Examiner relies on Tulley for disclosing “a lottery system that comprises . . . a controller (host system) networked to remote terminals or player devices. . . . If requested from the player via the player device, the controller implements a ‘quick pick’ application that randomly generates lottery numbers for the player.” (*Id.*)

The Examiner concludes that it would have been obvious to modify the wagering system of Stronach with the random “quick pick” number generated application at the host system of Tulley et al. Such a modification would provide an alternative and/or equivalent random means of automatically selecting candidates for the player in the event that the player is indecisive about what selections to make.

(*Id.* at 5.)

ISSUE

Has Appellant demonstrated that the Examiner erred in concluding that it would have been obvious to use a random-number generation application to select runner(s) in Stronach’s wagering system?

FINDINGS OF FACT

1. Stronach discloses a multimedia wagering system including a race providing system for facilitating wagering on race events, and a plurality of multimedia wagering terminal[s] in communication with the race providing system for wagering on the race events. The race provider includes means for selecting race events for wagering. The wagering terminal includes a multimedia display for displaying the selected race events, a user interface for placing a wager on the selected race event, payout means for providing a payout on the selected race events, and data processing means in communication with the multimedia display, the user interface and the payout means for facilitating wagering on the selected race events.

(Stronach 4: 7-15.)

2. In an embodiment, Stronach discloses:

The data processing means includes a handicapping receiver for receiving handicapping data from the race providing system, an odds receiver for receiving odds data from the race providing system, and a wagering processor in communication with the handicapping receiver and the odds receiver for selecting one or more racing candidates for the wager in accordance with the received handicapping data and the received odds data.

(*Id.* at 5: 6-11.)

3. Stronach also discloses:

In one variation . . . , the user interface 136 includes a select button for initiating reselection of the racing candidates, and the wagering processor 166 is configured to reinitiate selection of racing candidates upon receipt of the reselection command from the user interface 136. In this variation, preferably the wagering processor 166 is configured with a number of different candidate selection algorithms, with each algorithm giving different weights to the various handicapping data, and is configured to use a different one of the selection algorithms after each reselection command received from the user interface 136. In this manner, the wagering processor 166 typically selects different racing candidates for each actuation of the select button.

(*Id.* at 10: 21-29.)

4. Tulley discloses lottery “systems and methods wherein a lottery number combination is associated with a limited number of occurrences, such as a limited number of lottery tickets or a limited number of players” (Tulley, col. 1, ll. 30-35).

5. Tulley also discloses “the lottery number combination [can be] selected by a lottery system. . . . For example, the lottery system may use a

‘quick pick’ random process to select a lottery number combination for a player.” (*Id.* at col. 5, ll. 4-10.)

PRINCIPLES OF LAW

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). In addition, “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *Id.* at 420. It is also proper to “take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418. “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 421.

ANALYSIS

Stronach discloses a method for placing interactive wagers on races comprising providing a user with an opportunity to direct the interactive wagering application to automatically select which runner or runners are to be used in a wager (Findings of Fact (FF) 1-3). Tulley discloses a lottery system using “a ‘quick pick’ random process to select a lottery number combination for a player” (FF 5). We agree with the Examiner that it would have been obvious to utilize Tulley’s random process in the method of Stronach in order to automatically select runner(s) using a random-number generation application.

Appellant argues, however, that “the Office Action has failed to point to any motivation why one skilled in the art would provide an ‘alternative’ means of automatically selecting candidates in Stronach when Stronach

already includes a means for automatically selecting candidates,” e.g., a reselection button (App. Br. 7). We are not persuaded.

We understand Appellant’s concern that Stronach already includes a means for automatically selecting candidates. However, Stronach does not require that this reselection button use algorithms giving different weight to handicapping data. Instead, Stronach discloses that this is a preferred embodiment (FF 3). Given that it was known in the gambling art to use random processes to select picks (FF 5), we agree with the Examiner that it would have been obvious to use an algorithm giving no weight to the handicapping and odds data.

Appellant also argues:

[O]ne of ordinary skill in the art would not find it obvious to apply . . . a random selection process from a game that has equal odds to a race where each runner typically has different odds. It would be counterintuitive. Typically, there is one or more runners favored to win and one or more long shot runners that are unlikely to win. Using a random process to select runners, unlike Stronach’s automatic runner selection algorithms, does not take this into account.

(App. Br. 9-10.) We are not persuaded.

One of ordinary skill in the art is well aware that individuals do not always make wagers based on handicapping and odds data. Although it may be the “smarter” choice to make picks based on this data, sometimes it may be more fun to make a pick for another reason. In addition, the owner of the system may very well have an incentive to include a random algorithm rather than a determinative algorithm so as to not help the user to make the “smarter” pick.

CONCLUSION

Appellant has not shown that the Examiner erred in concluding that it would have been obvious to use a random-number generation application to select runner(s) in Stronach's wagering system. We therefore affirm the obviousness rejection of claims 1-46.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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